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SECTION 109.2 REVISIONS

Section 109.2 Plant and Wildlife Habitats and Endangered Species

Plants

SPECIAL-STATUS PLANTS

Graham's beardtongue (*Penstemon grahamii*) and White River beardtongue (*P. scariosus* var. *albifluvis*) are oil shale endemics that only occur in the Uinta Basin of Utah and the Piceance Basin of Colorado (U.S. Fish and Wildlife Service [USFWS] 2013a, 2013b). In August 2013, the USFWS proposed to list Graham's beardtongue and White River beardtongue as threatened, and to designate approximately 82,873 acres as critical habitat under the Endangered Species Act (ESA) of 1973 (as amended) (USFWS 2013a, 2013b). Uintah County, the Utah School and Institutional Trust Lands Administration (SITLA), the Utah Public Lands Policy Coordinating Office (PLPCO), and several private mineral landowners joined the USFWS in developing *Conservation Agreement and Strategy for Graham's Beardtongue* (*Penstemon grahamii*) and *White River Beardtongue* (*P. scariosus* var. *albifluvis*), hereafter referred to as the Agreement or the Penstemon Conservation Agreement (Penstemon Conservation Team 2014). Both species are currently managed as BLM sensitive plant species (BLM 2008) on federal lands and according to terms of the Agreement on both federal and non-federal lands (see Table 4 of the Agreement).

The Agreement was finalized on July 22, 2014, and the USFWS withdrew its proposed listings on August 6, 2014 (USFWS 2014). The signatories to the Agreement are as follows:

Kevin S. Carter, Director
SITLA

Kathleen Clarke, Director
PLPCO

Larry Crist, Field Supervisor
USFWS Utah Ecological Services Field Office

Jon D. Hill, Chair Rio Blanco County
Commission Rio Blanco County

Susan Linner, Field Supervisor
USFWS Western Colorado Field Office

Mike McKee, Chair Uintah County Commission
Uintah County

Gregory Sheehan, Director
Utah Division of Wildlife Resources

Michael G. Stiewig, Acting District Manager
BLM Vernal Field Office

Kent Walter, Office Manager
BLM White River Field Office

The purpose of the Agreement is to identify, avoid, minimize, and mitigate potential threats to Graham's and White River beardtongues and their habitats, and to promote the species' long-term persistence and thereby prevent the need for listing either species. A total of 44,373.4 acres are protected under the Agreement, and an additional 3,359.5 acres on private and state lands will receive interim protections as part of the Agreement. There are three categories of non-federally managed lands: conservation areas, interim conservation areas, and non-conservation areas (defined in Section 6.2 of the Agreement). From the date of Agreement finalization (July 22, 2014), conservation areas for Graham's beardtongue must be

managed to limit new surface disturbance to 5% per landowner (2.5% for White River beardtongue) and plants must be avoided by 300 feet.

Red Leaf's Seep Ridge Block lease area is located in the south-central Uinta Basin east of Seep Ridge Road. The area is characterized by extensive pinyon-juniper woodlands and sagebrush shrublands interspersed with exposed shale barrens. In late 2013, the Red Leaf Early Production System (EPS) site was surveyed for potential Graham's and White River beardtongue habitat, and historic Graham's beardtongue locations were revisited. None of the historic locations at the EPS site currently exist (see Section 30 on Figure 1). In 2014, all potential shale habitats in the Seep Ridge Block were delineated, and clearance surveys were completed in May and June. No White River beardtongue was found on or near the lease area, but numerous Graham's beardtongue locations were identified (see Figure 1). The Agreement requires clearance surveys within 4 years of surface disturbance; however, spot checks may be required within 1 year of construction.

There are 184.1 acres of SITLA Interim Class A conservation areas in the Seep Ridge Block (see Figure 1). Class A areas are defined as *likely* for surface development and removal from conservation status within the 15-year term of the Agreement. These areas will be managed as designated conservation areas until surface-disturbing activities have been permitted. On SITLA lands, once a mine permit application for surface-mining activities is filed with DOGM, SITLA may elect to transfer their status in whole or in part to that of a non-conservation area.

The remainder of the Seep Ridge Block consists of non-conservation areas, which are designated as those areas in suitable habitat where surface-mining activities will occur unimpeded by the Agreement. However, voluntary conservation measures may take place on these lands and will be considered by the Penstemon Conservation Team in evaluating the conservation of the species. In October 2015, Red Leaf designated and prepared an experimental site to test the feasibility of Graham's beardtongue transplant methods and materials as part of a Utah Division of Wildlife Resources Endangered Species Mitigation Fund project. This effort and any other voluntary conservation measures will be reported back to the Penstemon Conservation Team on an annual basis.

All conservation measures and mitigation will tier to the Agreement and any future amendments and management plans under the Agreement. Specifically, management of interim conservation areas must adhere to conservation measures 5–7 in Table 4 of the Agreement, which require the following:

- Pre-site surveys prior to any new ground-disturbing activities to determine presence and locations of plants.
- Surface disturbance limited to 5% new surface disturbance for Graham's beardtongue.
- Avoidance of plants by 300 feet. Surface-disturbing activities may occur within 300 feet of plants if it benefits or reduces impacts to the species or habitat and is approved by the Penstemon Conservation Team.
- Where new surface disturbance will occur in a conservation area within 300 feet of plants, the project proponent will mitigate for impacts.
- In interim conservation areas and non-conservation areas with approved exploration or plan of operations permits, conservation actions are encouraged but voluntary. Good faith, voluntary actions could include avoidance, minimizing impacts to individual plants, seed collection, plant salvage and transplant, and experimental reclamation and restoration treatments.

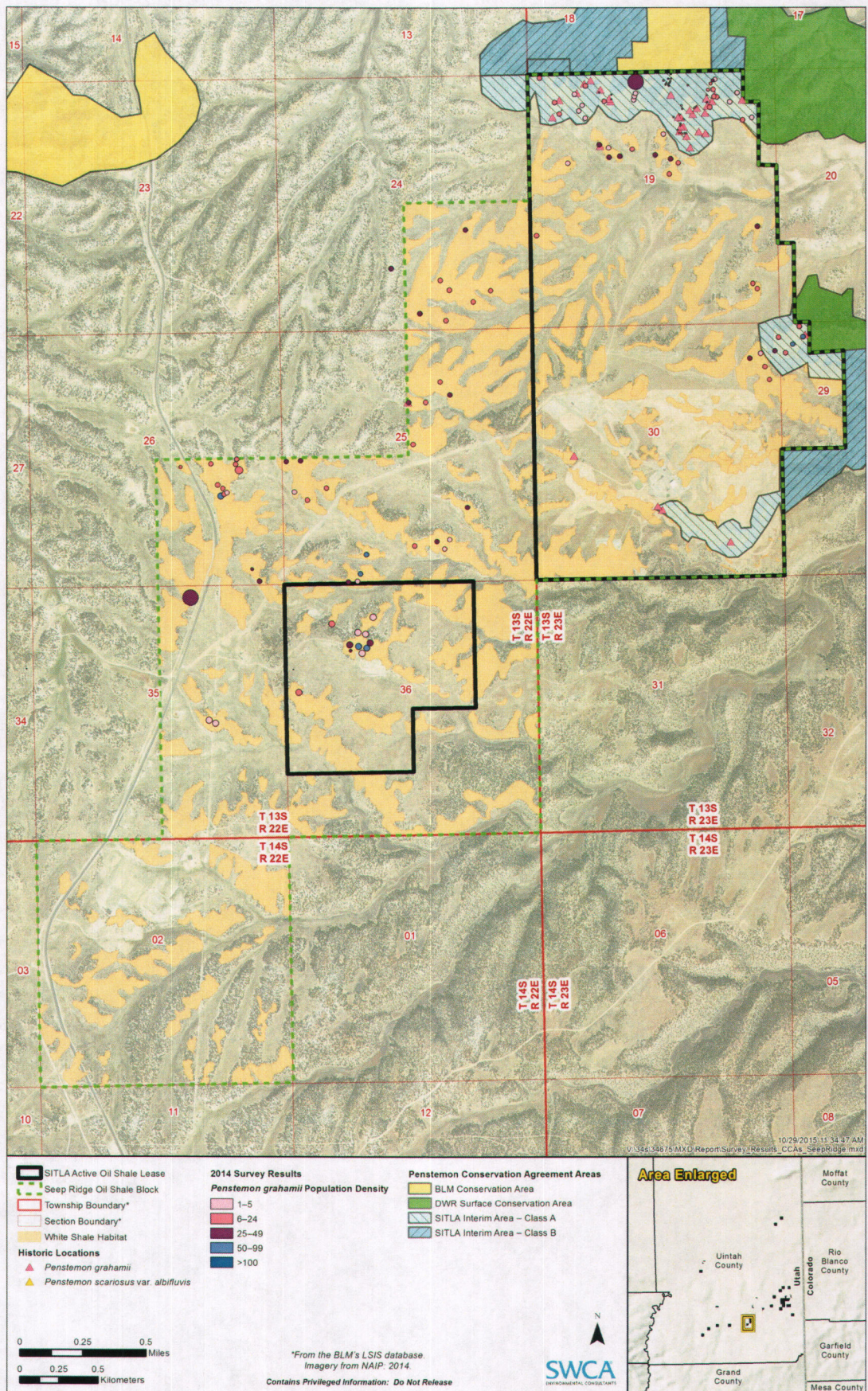


Figure 1. Penstemon Conservation Agreement designations on and near the Seep Ridge Block with Graham's beardtongue locations.

Bureau of Land Management (BLM). 2008. 6840-Special Status Species Management. Release 6-125. United States Department of the Interior, Bureau of Land Management. December 12, 2008.

Penstemon Conservation Team. 2014. *Conservation Agreement and Strategy for Graham's Beardtongue (Penstemon grahamii) and White River Beardtongue (P. scariosus var. albifluvis)*. Prepared for the State of Utah School and Institutional Trust Lands Administration; Uintah County, Utah; Utah Public Lands Coordination Office; Utah Division of Wildlife Resources; Rio Blanco County, Colorado; Bureau of Land Management; and U.S. Fish and Wildlife Service. Prepared by SWCA Environmental Consultants, Salt Lake City, Utah. July 22, 2014.

U.S. Fish and Wildlife Service (USFWS). 2013a. Endangered and Threatened Wildlife and Plants; Threatened Species Status for Graham's Beardtongue (*Penstemon grahamii*) and White River Beardtongue (*Penstemon scariosus* var. *albifluvis*); Proposed Rule. 78 *Federal Register* 47590–47611.

———. 2013b. Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Graham's Beardtongue (*Penstemon grahamii*) and White River Beardtongue (*Penstemon scariosus* var. *albifluvis*); Proposed Rule. 78 *Federal Register* 47832–47858.

———. 2014. Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rules To List Graham's Beardtongue (*Penstemon grahamii*) and White River Beardtongue (*Penstemon scariosus* var. *albifluvis*) and Designate Critical Habitat. 79 *Federal Register* 46041–46087.